Laborers Local No. 135 *and* Phoenixville Hospital. Case 4–CC–1881

December 19, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On May 25, 1990, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a brief in support and the General Counsel filed cross-exceptions and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

The Respondent excepts to the judge's finding that a reserved gate system was established on December 22, 1989, when the Hospital posted the Milligan Street entrance with a sign reserving it for the use of the primary (Blooming Glen), its subsidiaries and suppliers. The Respondent contends that because the neutral (Main Street) entrance was not posted until January 12, 1990, Blooming Glen was free to use that entrance and the Respondent therefore had a right to picket at that entrance until the neutral gate sign was posted there. We find no merit in this exception.

We agree with the judge that although the neutral gate, as such, was not posted until January 12, 1990, the reserved gate system was established prior to that date. In so doing we emphasize that, as noted above, the Hospital informed the Respondent on two occasions prior to January 12 that a reserved gate system was in place. In addition, we emphasize that Blooming Glen posted a notice to its employees within a day or two of the establishment of the reserved gate system in which Blooming Glen directed its employees to use the Milligan Street entrance to the jobsite and warned employees that they would be disciplined for breaking this rule. Finally, we note that the record reveals that the reserved gate system was generally effective and that only three or four incidents of misuse were alleged or reported. Only one Blooming Glen employee violated the reserved gate system, and he was disciplined for this violation.

In any event, we agree with the judge that the reserved gate system was clearly perfected as of January 12, 1990, and that the picketing of the Main Street and Nutt Street entrances continued beyond that date. Hence, even assuming—contrary to our finding—that the gate system was inadequately established before then, the Respondent plainly violated the Act by its picketing on and after January 12.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Laborers Local No. 135, its officers, agents, and representatives, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(a).

''(a) Inducing or encouraging any individual employed by Phoenixville Hospital, Twin Construction Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require the above-named Employers, or any person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Blooming Glen Construction Co.''

2. Substitute the following for paragraph 1(b) and reletter paragraph 1(b) as paragraph 1(c).

''(b) In any manner threatening, coercing, or restraining Phoenixville Hospital, Twin Construction Company, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the above-named Employers, or any other persons engaged in commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or cease doing business with, Blooming Glen Construction Co.''

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's finding that on December 27, 1989, Gibbons, the Hospital's director of environmental services, was accompanied by the Hospital's attorney when he informed Woodall, the Respondent's business agent, that a reserved gate system had been established. We find merit in this exception. The record clearly establishes that Gibbons was accompanied by the Hospital's attorney when he first notified Woodall on December 21, 1989, that a reserved gate system would be established and that Gibbons was alone on December 27 when he advised Woodall for the second time of the establishment of the reserved gate system. This inadvertent error does not affect the results of our decision.

[2] The General Counsel has excepted to the judge's failure to include a provision in his recommended Order requiring the Respondent to cease and desist from violating Sec. 8(b)(4)(ii)(B) of the Act. We find merit in this exception. Because the judge found that the Respondent violated this section of the Act, we conclude that his failure to include this provision in the recommended Order was inadvertent. We shall modify the recommended Order accordingly.

[3] Except for any period during which the primary employer was not present at the jobsite, Member Cracraft finds it unnecessary to pass on the question of whether the Respondent's picketing *prior to* the posting of the neutral gate was unlawful, as resolution of that question would not affect the remedy.

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his title may be, engage in or induce or encourage any individual employed by Phoenixville Hospital, Twin Construction Company, or any other person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of employment to use, manufacture, process, transport, or otherwise handle, or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require the above-named Employers, or any other person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or cease doing business with, Blooming Glen Construction Co.

WE WILL NOT threaten, coerce, or restrain Phoenixville Hospital, Twin Construction Company, or any other persons engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the above-named Employers, or any other persons engaged in commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or cease doing business with, Blooming Glen Construction Co.

LABORERS LOCAL NO. 135

Carmen P. Cialino, Esq., for the General Counsel.
Robert C. Cohen, Esq. (Markowitz & Richman), of Philadelphia, Pennsylvania, for the Respondent.
William F. Kershner, Esq. (Pepper, Hamilton & Scheetz), of Berwyn, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was heard in Philadelphia, Pennsylvania, on March 13, 1990, based upon an unfair labor practice charge filed on January 9, 1990, by Phoenixville Hospital (the Hospital), and a complaint issued by the Regional Director for Region 4 of the National Labor Relations Board (the Board), on January 31, 1990. The complaint alleges that Laborers Local No. 135 (Respondent or the Union), picketed at the Hospital from December 26, 1989, through January 30, 1990, in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act (the Act). Respondent's timely filed answer denies the commission of any unfair labor practices.

At the hearing, all parties were afforded full opportunity to examine and cross-examine witnesses, argue orally, and submit briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS

Preliminary Conclusions of Law

Blooming Glen Construction Company (Blooming Glen), the primary employer in this dispute, is a Pennsylvania corporation with its office located in Blooming Glen, Pennsylvania. It is engaged in the construction industry as a site development contractor. In the course and conduct of its business operations, Blooming Glen annually purchases equipment valued in excess of $50,000 directly from points located outside the State of Pennsylvania. I find and conclude that Blooming Glen is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Construction Site, Reserved Gates, and Picketing*

In November 1989,[1] the Hospital, in partnership with local doctors, began construction of a medical office building (the MOB project), on Hospital property.

The Hospital is located in Phoenixville, Pennsylvania. Its property is bounded on the north by Nutt Road, by Main Street on the east, Griffin Street on the south, and Gray Street on the west. Nutt and Main are heavily traveled, multilane roads, with speed limits of 35 to 45 mph. The MOB project is located in the middle of these grounds. The area of the construction is bounded by Main Street on the east and by Milligan Street on the north. Milligan is a short, two-lane east-west street off of Main which leads to one of the Hospital's parking lots; it runs behind five small buildings, professional offices, and stores, which front on Nutt but which may be entered from Milligan. Patrons and employees of those stores and offices, and of the Hospital bookshop which is also located on Milligan, park on Milligan and in the Hospital's lot. There is no parking on Nutt. There is also a service station on the corner of Main and Milligan.

In addition to an office building, the project includes the creation of additional parking spaces in the vicinity of the Hospital's main entrance, in the middle of the block on Nutt.

[1] All of the relevant events took place between mid-November 1989 and the end of January 1990. The project had actually begun somewhat earlier in 1989, with the demolition of an older building to make room for the instant project.

That work involves tree removal, ground clearing, sewer pipe and curb installation, and paving. This part of the project was completed, except for the paving, on January 9. The paving could not be done until warmer weather.

There are two Hospital entrances on Nutt Road; the one in the middle of the block serves as the principal Hospital entrance. The second Nutt Road entrance, which is used by emergency vehicles, is not involved. There is a driveway on Main, leading to the parking lots and the construction area, and two driveway entrances on Milligan. The Main Street entrance is the main construction driveway. At the outset of the construction, most of the construction supplies and equipment came on to the site from Main Street. Some was brought in from Nutt Road. Construction employees entered wherever they chose.

The general contractor for the MOB project is Twin County Construction (Twin). Twin retained Blooming Glen to do the site development and construction of the new parking area. Blooming Glen is the nonunion side of a ''double-breasted'' construction organization; the unionized side is Haines and Kibblehouser. Blooming Glen's employees were working on the site from about mid-November. Twin also had some supervisors and employees on the site and, from time to time, the employees of other contractors were also present.

Daniel Woodall, the Union's business manager, had visited the site in mid-1989 when union members had worked there on the demolition of an existing building. He first saw the new construction in early December and was aware that Blooming Glen's employees were nonunion, paid at a lesser wage rate than his members when they were employed by Haines and Kibblehouser.

On December 21, the Union returned and set up pickets at the main Hospital entrance on Nutt Road, the main construction entrance on Main, and at the point where Milligan joins Main Street. The signs read:

BLOOMING GLEN CONSTRUCTION UNFAIR
LABORERS LOCAL 135
DETERIORATION OF AREA WAGES AND STANDARDS
NO DISPUTE WITH ANY OTHER EMPLOYER

Since the inception of the construction, a sign has been posted at the Hospital's Nutt Road driveway. It reads:

NO CONSTRUCTION
VEHICLES
USE MAIN ST. ENTRANCE

With the onset of picketing, the Hospital decided to establish a reserved gate for the use of Blooming Glen, the primary employer. On December 21, James Gibbons, the Hospital's director of environmental services, told Woodall that such a gate would be set up at the Milligan Street entrance to the Hospital campus. On December 22, a 4-by-8 foot sign was placed at the driveway into the site from Milligan, about 250 feet west on Milligan from Main. That sign read:

THIS ENTRANCE IS RESERVED FOR THE EXCLUSIVE USE OF BLOOMING GLEN, ITS EMPLOYEES, SUPPLIERS AND SUB-CONTRACTORS. ALL OTHERS USE THE MAIN STREET RT. ''29'' CONTRACTORS ENTRANCE[2]

On the same date, a letter was sent to Blooming Glen, with a copy to Twin, notifying those employers of the reserved gate and stating:

> it is imperative for all Blooming Glen employees, vehicles, equipment and suppliers to use this entrance. Use of any other gate by the above mentioned group may void the restriction on the picketers and could ultimately result in the picketing of the entire site.
>
> Please be sure that all appropriate people are informed to use only the reserved gate.

Blooming Glen posted a notice in its office (a substantial distance from the site), where its employees would see it, stating that all of its trucks and employees ''must use Milligan Street in and out of the job site.'' A week off, without pay, was threatened for violations.

The Hospital also notified its employees that they were to avoid using the Main Street entrance, ''whenever possible.''

On December 27, Gibbons, together with the Hospital's attorney and its vice president, repeated to Woodall that a reserved gate had been established at Milligan Street and threatened to seek injunctive relief unless the Union restricted its picketing to that location. Woodall refused to comply.

On January 12, the following sign was posted at the main construction entrance, on Main Street:

THE FOLLOWING NAMED CONTRACTORS, THEIR EMPLOYEES, SUPPLIERS OR SUB CONTRACTORS MAY NOT USE THIS ENTRANCE
BLOOMING GLEN THE ABOVE STATED PERSONS MUST USE THE MILLIGAN STREET ENTRANCE

Notwithstanding the signs and warning, the Union picketed at all three gates on a daily basis from December 21 until the Regional Director's Motion for a Preliminary Injunction was granted on January 30 by United States District Court Judge Joseph L. McGlynn Jr.

No Blooming Glen employees were present during the week following Christmas, from December 26 through 29. Nonetheless, the Union picketed until about 11 a.m., each morning. Woodall had been informed by Gibbons, on December 27, that those employees were not on the site; because he observed employees doing the same work as the Blooming Glen employees, using the same equipment, Woodall did not believe Gibbons.

The signs were generally effective in controlling gate use; no more than three or four incidents of misuse were alleged

[2] I cannot credit Woodall's recollection that only a used piece of plywood, bearing the likeness of a clown, without any of the reserved gate language, was posted between December 21 and January 11. Such an oversight is improbable and inconsistent with Gibbon's conversations with Woodall and the correspondence, discussed infra.

or reported. Prior to the onset of picketing, materials had been delivered to Blooming Glen through the Nutt Road driveway. On December 21 or 22, a truck loaded with pipe came in through that driveway. A second truck started to do so and was turned back. Seeing these incidents, the Union began to picket at Nutt Road although it had not initially done so. Sometime later, another pipe truck attempted to enter the site from Main Street; it, too, was turned back and required to enter through Milligan Street. On one occasion, a Blooming Glen employee entered through a gate other than on Milligan Street. He was observed and, pursuant to the notice Blooming Glen had posted, was suspended for 1 week. At some point, a van with Haines and Kibblehouser surveyors entered improperly. On another occasion, the son of a Twin superintendent visited the site, entering through Nutt Road.

B. *Analysis and Conclusions*

The provisions of Section 8(b)(4) reflect ''the dual congressional objective of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.'' *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). Thus, a union is permitted to picket a primary employer with whom it has a labor dispute but runs afoul of Section 8(b)(4) if it pickets a neutral employer with a proscribed object of enmeshing that neutral employer in a controversy not its own. In assessing union picketing activities at a common situs, the Board is confronted by the difficult problem that unrestricted picketing activity would be inconsistent with the neutral employer's intended immunity. Conversely, depriving a union of all opportunity to picket at a common situs might render nugatory its right to bring pressure upon a primary employer.

In order to accommodate these conflicting interests, the Board in *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950), evolved criteria to help resolve the question of whether a union had the proscribed motive of enmeshing neutral employers. The rule as originally stated by the Board is as follows:

> When a secondary employer is harboring the situs of a dispute between a union and a secondary employer, the right of neither the union to picket nor the secondary employer to be free from picketing can be absolute. The enmeshing of premises and situs qualifies both rights. In the kind of a situation that exists in this case, we believe that picketing of the premises of a secondary employer is primary if it meets the following conditions: (a) The picketing is strictly limited to times when the the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing, the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer.

The Board and the courts have uniformly held that common situs picketing violates Section 8(b)(4) if any of the *Moore Dry Dock* requirements are breached. See *Electrical Workers IBEW Local 323 (J. F. Hoff Electric)*, 241 NLRB 694 (1979), enfd. 642 F.2d 1266 (D.C. Cir. 1980); *Teamsters Local 126 (Ready Mixed Concrete)*, 200 NLRB 254 (1972).

Further, in order to insulate neutral employers, their employees and suppliers, employers upon a common situs are permitted to establish and maintain separate gates for use by those involved in a labor dispute and those not involved. *Electrical Workers IUE Local 761 (General Electric) v. NLRB*, 366 U.S. 667 (1961). Where such gates are properly established, a union may lawfully picket only at the gate of the employer with whom it has a dispute.

Contrary to the contention of Respondent, the MOB project was, I find, a common situs to which the *Moore Dry Dock* standards are applicable. Present on the site with Blooming Glen were the Hospital and its employees, Twin and some of its employees and, from time to time, the employees of several other contractors. See *Electrical Workers IBEW Local 332 (Lockheed Missiles)*, 241 NLRB 674 (1979).

The Union's second contention is that no proper reserved gate system was established when the initial sign at Milligan Street was erected. The sign at Blooming Glen's gate on Milligan merely precluded neutral employers from using Blooming Glen's gate. Neither that sign, nor any other sign posted before January 12, precluded Blooming Glen, its employees, suppliers, and subcontractors from using other gates. Therefore, the Union argues, since the primary employer was free to use any of the gates, the Union was similarly free to picket any of the gates in order to reach the primary and its employees.

While there is a certain logic to Respondent's argument, no precedent has been offered in its support and I have found none. On the contrary, the Board has held that a single sign, reserving one gate for the exclusive use of the primary, effectively limits picketing to that gate at least where, as here, the Union is advised of the existence of that gate and there is no substantial deviation from its proper use. See *Lockheed Missiles*, supra. See also *NABET Local 31 (CBS)*, 237 NLRB 1370 (1978), and *Sun Refining Co. v. Trades Council*, 117 LRRM 2127 (D.C. Pa. 1984).

In *Sun Refining*, supra, a sign had been posted which reserved a gate for the exclusive use of the primary's employees and suppliers, precluding others from using that gate but failing to specifically forbid the primary's employees and suppliers from using other gates. The court held that such an instruction could be inferred from the language and from the neutral's instructions to the primary. Here, as in *Sun Refining*, the primary employer was given explicit instructions regarding which gate its people were to use. Additionally, the primary issued explicit orders to its employees regarding gate use and, in the single case of misuse by one of those employees, severely disciplined that employee. Where its suppliers attempted to use an improper gate, they were required to back out and go to the right gate.

Even assuming that the gates were improperly established prior to January 12, it is clear that the gates were perfected on that date. Notwithstanding this, the Union's picketing continued at all three gates until enjoined on January 30.[3]

[3] Respondent's contention that no violations can be based upon activities occurring after the January 9 filing of the charge is without merit. In *NLRB v. Fant Milling*, 360 U.S. 301, 309 (1959), the Court stated that ''the Board is

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The Union further argues that its picketing on Nutt Road met *Moore Dry Dock*'s ''reasonably close'' standard inasmuch as Blooming Glen was working on the parking lot in that immediate vicinity. Where, as here, a reserved gate has been properly established and maintained, and the neutrality of the other gates has not been impaired,[4] the Board analyzes the ''reasonably close'' standard by examining the proximity of the picketing to the reserved gate, not to the primary employees' work location. The Union's picketing was not restricted to the reserved gate and thus, the *Moore Dry Dock* presumption comes into play. *Electrical Workers IBEW Local 323 (Renel Construction)*, 264 NLRB 623, 624 (1983).

The most difficult contention is the Union's argument that the reserved gate was improperly established and therefore ineffective because it prevented the Union from effectively communicating its message to members of the public. ''The purpose of the separate gate,'' it has been noted, is to minimize the impact of picketing ''on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees.'' *CBS, Inc.*, supra at 1375 and cases cited therein; *Lockheed Missiles*, supra.

In *Electrical Workers IBEW Local 453 (Southern Sun Electric)*, 237 NLRB 829 (1978), the Board found the reserved gate to have been improperly established in part because it unjustly impaired the union's ability to convey its message to the primary employer's ''personnel, suppliers, visitors, and the general public.'' (237 NLRB at 830, emphasis added.) Respondent's principal reliance is upon this language and its contention that here, as in *Southern Sun Electric*, ''the placement of the reserved gate in an alley which was barely visible to the public'' similarly impaired the Union's right to convey its message to the public and rendered the gate system legally ineffective.

A similar contention was raised in *Electrical Workers IBEW Local Union 501 (C. W. Pond Electrical Service)*, 269 NLRB 274 (1984). In that case, the primary reserved gate was located at the end of a dead-end public road, rarely used by the general public. In its discussion in *C. W. Pond*, the Board noted that in *Southern Sun Electric*, the neutral sign had been placed:

> approximately halfway between two entrances to the construction site. The reserved gate sign for the primary was located near a third entrance on a private alley which, although owned by the general contractor, could not be distinguished visually from the private parking lot of the adjacent store building. Furthermore, the reserved gate sign was barely visible from a public right-of-way. In addition, the primary employer had ignored the reserved gate on occasion.

The Board distinguished the facts in *C. W. Pond* from those in *Southern Sun Electric* and found the union's argument misplaced. It specifically stated that ''*Southern Sun Electric* does not hold that a primary reserved gate on a public road is established improperly simply because there is little traffic by the general public at the primary reserved gate.''

In *Carpenters Local 33 (CB Construction)*, 289 NLRB 528, 532 (1988), the gate reserved for the use of the primary was at the rear of a building, in an alley, obscured from public view; the neutral gate was the main entrance to the building which was undergoing remodeling, on a busy city street. The administrative law judge concluded that the reserved gate had been hidden from general public view and located so remotely and inconveniently as to substantially impair the effectiveness of the union's picketing. He found that this rendered the union's picketing at the neutral gate privileged. The Board, in reaching a contrary conclusion, noted, inter alia,[5] evidence of some use of the alley and that entrance by visitors and tenants of the building and other members of the public, as well as other pedestrian traffic. It held at 532:

> We find without significance . . . that members of the general public might fail to notice or be unable to read the primary gate sign because of its location . . . . Based on the evidence of public use of the passageway, in particular, the ''limited public'' composed of tenants, visitors, prospective customers, or business callers utilizing the rear passageway or adjacent public parking lot, we conclude that pickets stationed in the immediate vicinity of the primary reserved gate could have effectively communicated their message. Although the primary gate location may not have been ideal, we note that Board precedent does not require primary reserved gate placements calculated to maximize a picket's chances to reach members of the public [citing *Carpenters Local 354 (Sharp & Tatro)*, 268 NLRB 382 (1983)].

The facts of the instant case are similar to those in *CB Construction*. Milligan Street was a public roadway, used by the public to enter a number of small businesses or professional offices, as well as to enter the Hospital's bookshop. Members of the public and persons working in those businesses and offices parked on Milligan or in the Hospital's parking lot which was located thereon. Those persons could observe both the reserved gate sign and the Union's picket sign. Thus, the Union was able to present its message to both the primary employer's employees, suppliers, and visitors and some members of the general public. While the location of that gate limited notice of the Union's message by the public, the limitation was not so great as to legitimize picketing at more public locations. See *C. W. Pond*, supra, *Sharp & Tatro*, supra, and *CB Construction*, supra.

Accordingly, I find that Respondent's picketing at neutral gates, in contravention of *Moore Dry Dock* and reserved gate standards, evidenced its secondary motivation and established that its picketing violated Section 8(b)(4)(i) and (ii)(B) of the Act.

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not precluded from 'dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board.' *National Licorice Co. v. Labor Board*, 309 U.S. 350, at 369.''

[4] Contrary to Respondent's contention, I find no evidence of any substantial taint of the gates. What misuse occurred happened early on, was limited in number, and was quickly corrected. Several of the incidents cited, including trucks which attempted to use the wrong gate and were required to back out, and a visit to the site by the nonemployee son of the general contractor's superintendent, do not constitute taint at all. See *Plumbers Local 274 (Stokely-Van Camp)*, 267 NLRB 1111 (1983), and *Operating Engineers Local 18 (Dodge-Ireland)*, 236 NLRB 199 (1978).

[5] It also noted the absence of taint of the neutral gate and its prior use by the primary indicating the absence of any ''bad faith ploy'' intended to render the union's picketing ineffective.

Finally, the General Counsel urges that the Union's picketing from December 26 through 29, when no employees of the primary were present, contrary to the constraints of the second proviso of *Moore Dry Dock*, evidenced a secondary intent. Woodall, the Union's representative, admitted having been told on December 27 that there were no Blooming Glen employees present, but claimed that he did not accept this representation. The specific employees were not known to the Union and, from what he could observe, the same work was being done by employees using the same trucks and equipment. Moreover, the Union noted, it had no reason to believe that there would be a cessation of the work during Christmas week as there was no tradition of it in the industry. The Union picketed each day that week until about 11 a.m. According to Woodall, they remained only long enough to ascertain whether Blooming Glen's employees were working and left after it was observed that whatever work was being done was the work of Teamsters or Operating Engineers, not Laborers.

Respondent's defense is not convincing. There were no Blooming Glen employees on site during the days in question and the Hospital's representative had so informed the Union. Thereafter, the Union picketed at all three gates until about 11 a.m. each day. It stretches credulity to assert that picketing at all three gates, for approximately one-half of each workday, was required to determine if the primary's employees were working. Accordingly, I find that the requisite secondary motivation has been established by the Union's picketing during this period, additionally supporting a finding of violation.

CONCLUSIONS OF LAW

1. By picketing at the gates reserved for neutral employers, their employees, and suppliers at the Phoenixville Hospital Medical Office Building jobsite, and by picketing at that site at times when employees of the primary employer were not present, in furtherance of its dispute with Blooming Glen, the Union has induced and encouraged individuals employed by the Hospital, Twin, and other persons to refuse to perform services at the Hospital and at the MOB jobsite with an object of forcing or requiring the Hospital, Twin, and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of each other and to cease doing business with each other and in order to force or require Twin and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of Blooming Glen and to cease doing business with Blooming Glen and has, thereby, engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B).

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Laborers Local No. 135, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing and encouraging individuals employed by the Hospital, Twin, and other persons to refuse to perform services at the Hospital and at the MOB jobsite with an object of forcing or requiring the Hospital, Twin, and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of each other and to cease doing business with each other and in order to force or require Twin and other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of Blooming Glen and to cease doing business with Blooming Glen.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its office in Norristown, Pennsylvania, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Phoenixville Hospital, Twin County Construction, and Blooming Glen Construction Company, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read '' Posted Pursuant to a Judgment of the National Labor Relations Board.''